IN THE
SUPREME COURT OF MISSOURI

SC92380

GARY F. TOELKE, Sheriff, et al.,

Defendants/Appellants,

v.

JOHN DOE

Plantiff/Respondent

Appeal from the Circuit Court of the County of Franklin
The Honorable Gael D. Wood, Circuit Judge

BRIEF OF RESPONDENT JOHN DOE

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STATEMENT OF FACTS

On December 6, 1983, John Doe ("Doe") pleaded guilty in the Circuit Court of Franklin County, Missouri, to one count of sexual assault in the first degree, a class C felony, in violation of section 566.040. Doe, twenty-two years of age at the time of the offense, pled guilty to having sexual intercourse with a fifteen year old. LF 52. He was sentenced to six months in the Franklin County Jail. *Id.* The execution of that sentence was suspended, and he was placed on probation for five years. *Id.* Doe successfully completed that probation. *Id.*

In 1995, Doe registered as a sex offender as required by law, and is currently registering as a sex offender. In 2010, he filed a petition in the Circuit Court of Franklin County seeking a judgment declaring he need not register as a sex offender pursuant to both Missouri's sex offender registration law and the federal sex offender registration law. LF 4. He also sought an order requiring the removal of his name from the registry, as well as the destruction of any reference or records relating to him in the registry. *Id.*

The case was tried on a stipulated record. LF 69. The Circuit Court entered a judgment declaring section 589.400 unconstitutional as applied to Doe, declined to consider whether Doe is required to register under federal law, and denied Doe's request for the destruction of records. LF 70.

ARGUMENT

Standard of Review

Statutory interpretation is a question of law, which this Court reviews de novo. *Murphy v. Carron*, 536 S.W.2d 30, 32 (Mo. banc 1976). The constitutionality of a statute is a question of law. *Doe I, et al., v. Phillips,* 194 S.W.3d 833, 842 (Mo. banc 2006). A "statute is presumed to be valid and will not be declared unconstitutional unless it clearly contravenes some constitutional provision." *Doe v. Roman Catholic Diocese of Jefferson City*, 862 S.W.2d 338, 340 (Mo. banc 1993). Further, "it should be obvious that a statute cannot supersede a constitutional provision," *Id.* at 341. "Neither the language of the statute nor judicial interpretation thereof can abrogate a constitutional right." *State v. Bolin*, 643 S.W.2d 810 (Mo. banc 1983).

I. The Circuit Court Correctly Held that, as Applied to Respondent, the Requirement to Register as a Sex Offender Under § 589.400 Is Unconstitutionally Retrospective in Its Operation (Response to Appellant's Second Point Relied On).

A. Section 589.400 is Retrospective in Its Operations, and Violates Article I, Section 13 of the Missouri Constitution.

The Circuit Court correctly held that section 589.400 violates the Missouri Constitution, Article I, Section 13, and is therefore unconstitutional as applied to Respondent. Article I, Section 13 of the Missouri Constitution forbids enactment of a law that is "retrospective in its operation." For 100 years, this Court has consistently held that a retrospective law "is one which creates a new obligation, imposes a new duty, or

attaches a new disability with respect to transactions or considerations already past." *Squaw Creek Drainage Dist. v. Turney*, 235 Mo. 80, 138 S.W. 12, 16 (Mo. 1911). The question is whether Section 589.400, enacted after Respondent's conviction, imposes new obligations, duties or disabilities, as Article I, Section 13 bars enactment of laws that impose such new obligations, duties or disabilities on matters already legally and finally settled. *F.R. v. St. Charles County Sheriff's Dep't*, 301 S.W.3d 56, 61 (Mo. 2010).

When Respondent was convicted in 1983, there was no law requiring him to register as a sex offender. That law, Section 589.400 (SORA), was not enacted until 1995. Its requirement that a person who has been convicted of a sex offense must register as a sex offender under state law imposes a new obligation, or duty or disability. Appellant asserts that a law is retrospective in its operation only if it takes away or impairs a vested or substantial right. App. Br. 24. However, the constitutional language does not limit its application to vested rights. *F.R.*, 301 S.W.3d at 62. Retrospective laws are defined "as those *which take away or impair vested rights acquired under existing laws*, or create a new obligation, impose a new duty, or attach a new disability in respect to transactions or considerations already past." *Jerry-Russell Bliss, Inc. v. Hazardous Waste Mgmt. Comm'n*, 702 S.W.2d 77, 81 (Mo. banc 1985). "The vested rights reference is a disjunctive option, along with a new obligation, or duty or disability. Because of the disjunctive 'or,' the constitutional principle, as invoked here, under this Court's precedents, does not require a showing of a vested right." *F.R.* at 62.

A subsequent law that requires a person to do something, especially one that carries with it a criminal penalty for not doing what the new law requires, is the imposition of a

new obligation or duty imposed because of Respondent's 1983 conviction. In *Jerry-Russell Bliss*, this Court approved consideration of prior waste management practices in denying an applicant a license to transport hazardous waste. 702 S.W.2d at 81. "A statute is not retrospective or retroactive," this Court said, "because it relates to prior facts or transactions but does not change their legal effect, or because some of the requisites for its action are drawn from a time antecedent to its passage, or because it fixes the status of an entity for the purpose of its operation." *Id*.

In this case, however, section 589.400 is the sole reason for the new duty, obligation or disability; thereby changing the legal effect of Respondent's earlier conviction. Under Section 589.400, Respondent's 1983 conviction requires him to fulfill a new obligation and imposes a new duty to register and maintain and update the registration regularly, based solely on his 1983 conviction, which occurred prior to Section 589.400's enactment. Section 589.400 looks at Respondent's past conduct and "uses that conduct not merely as a basis for future decision-making by the state.[1]" *Jane Doe I v. Phillips*, 194 S.W.3d 833, 838 (Mo. 2006).

In 2006, in *Doe v. Phillips*, this Court held that the portions of the law imposing an affirmative duty to register based solely on pleas or convictions for conduct committed

[1] In 2010, this Court found that the Halloween requirements of section 589.426 and the school residency requirement of section 566.147 are retrospective and violate Article I, Section 13 of the Missouri Constitution as applied to those who pled guilty prior the enactment of these requirements. *F.R.*, 301 S.W.3d at 66.

prior to enactment of Megan's Law on January 1, 1995 violates Missouri's constitutional prohibition of laws "retrospective in … operation." *Id.* This Court further held that Megan's Law's registration requirements may not be enforced as to those persons who were convicted or pled guilty prior to the law's January 1, 1995 effective date. *Id.* at 833. The obligations and duties, imposed by statute more than a decade after Respondent's criminal conviction, and based solely on that prior conviction, violates Respondent's constitutional rights under article I, section 13 of the Missouri Constitution. Mo. Const. Art. I, Sec. 13.

Appellant cites *State ex rel. Koster v. Olive* in support of its contention that Respondent's obligation to register under Missouri law is not based on his past criminal acts, but on his current status as a sex offender. 282 S.W.3d 842 (Mo. banc 2009); App. Br. 24-25. Appellant's attempt to analogize Doe's registration requirement and a statute requiring permits for dams constructed prior to the effective date of the statute is unfounded and illogical. The Court in *Olive* held that the past construction of the dam was not the triggering mechanism for the permitting requirement. *Id.* at 848. Rather, it was the dam's present use and its present ability to hold back substantial amounts of water that triggered the permitting requirement. *Id.* The Court itself distinguished this constitutionally permissible permitting requirement from the sex offender registration requirements stemming from a past single act. *Id*.

In *Olive*, the requirements on the dam were enacted because it will continue to operate as a dam in the future, and must do so safely. *Id.* Here, Respondent successfully completed his probation and has not been shown to continue to operate as a criminal. It is

his past conviction, not his present or future dangerousness, which by itself creates the obligation to register. The dam, on the other hand, is still a dam and a known source of present and future danger. To continue to exist, the dam must comply with restrictions imposed to ensure safe operation. If the state in the current case was required to present evidence that Respondent is presently a pedophile (evidence of present or future dangerousness) the state legitimately might impose a present or future obligation to register as a sex offender. There would be no retrospective law violation, even if a past conviction were part of the proof. Here, however, it is the conviction itself, not any evidence of present or future dangerousness, that alone imposes the obligation.[2] *Id.; F.R.*, 301 S.W.3d at 66. This is a violation of Missouri's constitutional ban on retrospective state laws.[3] Mo. Const. Art. I, Sec. 13.

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[2] Appellant's attempt to analogize Sexually Violent Predators (SVPs) also must fail. App. Br. 25. Respondent is not a sexually violent predator. L.F. 52.

[3] Of the five categories of felony offenders in Missouri's correctional population -- drugs, nonviolent felonies, violent felonies, DWI (driving while intoxicated) felonies, and sex and child abuse -- sex offenders have the lowest rates of recidivism. Their rate of recidivism after two years is 5.3 percent, while recidivism rates for other categories of offenders are 9.6 percent for violent offenders, 14.9 percent for nonviolent offenders, 11.7 percent for drug offenders, and 11.4 percent for felony DWI offenders. Missouri Sentencing Advisory Commission, *Recommended Sentencing Biennial Report 2009* at 46. The rate of recidivism includes the likelihood of a convicted sex offender to commit

In 2009, this Court decided *Doe v. Keathley*. 290 S.W.3d 719. It held that the Sexual Offender Registration and Notification Act (SORNA) imposes an independent federal obligation requiring registration in Missouri. *Id.* This Court further held that SORNA operates irrespective of any retrospective state law that has been enacted and may be subject to the Article I, Section 13 ban on the enactment of retrospective state laws. *Id.* The text of SORNA itself provides that its registration requirements apply to individuals who committed a sex offense prior to its enactment. 42 U.S.C. section 16913(d); 28 C.F.R., section 72.3. This case did not address whether someone not subject to SORNA's registration requirements would have to register in Missouri (presumably, because *Phillips* addresses that scenario). *Keathley*, 290 S.W.3d 719; *Phillips*, 194 S.W.3d 833. Nor did this case address whether Article I, Section 13 of the Missouri Constitution protects the pre-1995 offender from continued (lifetime) registration under section 589.400 after fulfillment of any federal registration requirement. It is this question that is dispositive here.

Assuming, *arguendo*, that Respondent has fulfilled his federal registration requirement of twenty-five years (discussed further in Respondent's Second Point Relied On), the only basis for continued registration is the state registration law, section 589.400. Section 589.400 provides that a sex offender in Missouri is subject to all registration requirements under SORA – including lifetime registration – if the sex offender "has been or is

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any future crime, not just a sex offense. *Id.*

required to register in another state or has been or is required to register under tribal, federal, or military law." Section 589.400.1(7). Requiring Respondent to register as sex offender pursuant to this statute, enacted in 1995, is unconstitutionally retrospective. Mo. Const. Art. I, Section 13. Similarly, using this retrospective state law as a basis for lifetime registration violates Missouri's ban on retrospective state laws. *Phillips*, 194 S.W.3d 833. Despite any past obligation of Respondent to register under SORNA, requiring Respondent to register for life under SORA is unconstitutional. SORA imposes a new and distinct lifetime registration requirement. Section 589.400.1(3). The use of language from a state statute enacted prior to Respondent's plea of guilty to justify mandating a separate and distinct lifetime registration requirement violates Missouri's ban on such retrospective state laws. Mo. Const. Art. I, Section 13.

In deciding *Keathley*, this Court did not find that the Missouri Constitution does not protect against retrospective state laws like SORA.[4] *Keathley*, 290 S.W.3d 719. Nor did this Court find that once one has a federal registration requirement under SORNA, one is

[4] Not only did *Doe v. Keathley* not expressly overrule *Doe v. Phillips*, but this Court is still, as recently as this year, citing *Doe v. Phillips* as valid law. *Doe v. Phillips*, 194 S.W.3d at 852 (statute that imposed a new obligation and duty on sex offenders to register, maintain, and update registration based solely on their offenses prior to the statute's enactment was retrospective in operation), *Keathley*, 290 S.W.3d 719; *State v. Young*, 362 S.W.3d 386, 391 (Mo. 2012).

constitutionally subject to SORA's lifetime registration requirements. *Id.* Rather, it found that the Missouri Constitution does not protect against an independent, federal registration requirement under SORNA. *Id.* Any argument that SORA is constitutional as applied to Respondent must fail. The Circuit Court was correct in holding that section 589.400 violates Article I, Section 13 of the Missouri Constitution.

B. A Remedial Statute Still Has to Be Constitutional

Appellant asserts that the legislative intent, as well as the plain meaning, of section 589.400 is apparent and readily ascertained. App. Br. 19. Appellant further asserts that SORA is a remedial statute, and should be liberally construed. App. Br. 20. Nonetheless, any application of section 589.400 must be constitutional, despite the intent of the legislature, the plain meaning of the statute, or any arguments for liberal construction. *Ex parte Berger*, 193 Mo. 16, 25-26 (Mo. 1905).

> The power of the General Assembly to enact laws is subject in all matters to the limitations of the Constitution of Missouri, whether they be expressed by prohibitory clauses, or by affirmative provisions relating to the matter in hand. Both methods of restriction are equally binding on the lawmaking power and no valid law can be enacted by it which contravenes either.

State v. St. Louis, I. M. & S. R. Co., 253 Mo. 642 (Mo. 1913).

Appellant cites *State v. Boeji* in support of its argument that Respondent must register under SORA. App. Br. 22; 352 S.W.3d 625 (Mo. App. S.D. 2011). The court in *Boeji* found that he was required to register under SORA, because his "duties are based on federal law and his Illinois registration, and not merely on pre-Megan's Law criminal conduct." *Id.* at 628. It was his move to Missouri that triggered his registration under

SORA. *Id.* Here, Respondent lived in Missouri at the time of his offense, and has not left the state since then. Respondent does not assert that applying Missouri law to a sex offender who moves to Missouri from another state violates Missouri's onstitution. Respondent agrees that out-of-state offenders become constitutionally subject to SORA when they move to Missouri. App. Br. 21. It was not Respondent's move to Missouri that triggered his registration under SORA. Rather, it was the implementation of legislation after he pled guilty that triggered his registration requirements under SORA. It is this application of new law, in the absence of other "triggers" – such as moving into the state – that is unconstitutional as applied to Respondent. Mo. Const. Art. I, Sec. 13.

II. The Circuit Court Was Correct in Declining to Consider the Questions of Federal Law Pertaining to Whether Respondent is Required to Register Under the Federal Sex Offender Registration and Notification Act, However, if this Court Determines the Circuit Court Erred in Not Deciding this Federal Question, Respondent is Not Required to Register as a Sex Offender Under SORNA (Response to Appellant's First Point Relied On).

A. The Circuit Court Correctly Deferred to the Federal Court to Determine Respondent's Registration Requirements Under Federal Law.

Congress granted federal courts general federal question jurisdiction in 1875. *Mims v. Arrow Fin. Servs. LLC*, 132 S. Ct. 740, 747 (U.S. 2012). As codified, the law provides: "The district courts shall have original jurisdiction of all civil actions arising under the

Constitution, laws, or treaties of the United States." 28 U.S.C. §1331. Here, the question is whether Respondent must register as a sex offender under SORNA, the federal Sex Offender Registration and Notification Act. Because this is a question of federal law, compounded by the lack of guidance and authority regarding this determination, the Circuit Court correctly deferred to a federal court for determination of this issue. L.F. 70.

B. Assuming, Arguendo, that the Circuit Court Had an Obligation to Decide Both State and Federal Law, Respondent is Not Required to Register as a Sex Offender Under SORNA.

In 2006, the Federal government passed 42 U.S.C. §§16901-45 (SORNA), which, among other things, instructed states to pass legislation setting up a sex offender registration system. 42 U.S.C. §§16901-45. The "carrot" for passing such legislation was losing certain federal funding if the sex offender registration system was not affected. *Id.* SORNA also instructed states to mandate that sex offenders register as such once the proscribed registry was in place. *Id.*[5]

SORNA categorizes different offenses into "Tiers." 42 U.S.C. § 16911. Each tier has a separate definition and time duration for registration. *Id.* Section 16915 of SORNA

[5] When evaluating whether a jurisdiction has substantially implemented SORNA, the Attorney General considers whether the jurisdiction is unable to substantially implement SORNA because of a demonstrated inability to implement certain provisions that would place the jurisdiction in violation of its own constitution, as determined by a ruling of the jurisdiction's highest court. 42 U.S.C. Section 16925.

discusses the registration requirements under each tier. 42 U.S.C. § 16915(a). Here, Respondent pled guilty in 1983 to the class C felony of sexual assault in the 1st degree in violation of R.S.Mo. § 566.040. L.F. 52. This offense is classified as a "tier II offense." 42 U.S.C. § 16911(3)(a). The term "tier II sex offender" is defined as a sex offender other than a tier III sex offender whose offense is punishable by imprisonment for more than 1 year and is comparable to or more severe than an enumerated federal offense. *Id.* Here, Respondent's crime of sexual assault is comparable to the federal crime of abusive sexual contact in violation of 18 U.S.C. § 2244, which includes sexual abuse of a minor or ward in violation of 18 U.S.C. § 2243(a). Sexual abuse of a minor or ward, in violation of 18 U.S.C. § 2243(a), is defined as a sexual act with another person who has attained the age of 12 years but has not attained the age of 16 years and is at least four years younger than the person so engaging. 18 U.S.C. § 2243(a). When Respondent pled guilty, he admitted to having sexual intercourse with someone that was fifteen years of age. L.F. 52. Because the victim in this case had attained the age of at least thirteen years of age, Respondent is classified as a Tier II offender instead of a Tier III offender, which is reserved for cases involving force, rendering someone unconscious, or victims that are younger than thirteen years of age. 42 U.S.C. § 16911(4)(A). Pursuant to SORNA, Tier II sex offenders must register for a period of 25 years. *See* 42 U.S.C. § 16915(a)(2).

The National Guidelines for Sex Offender Registration and Notification ("SMART Guide") was promulgated by the United States Department of Justice through United States Attorney General's office to provide further guidelines for courts to use to interpret and implement SORNA. 73 Fed. Reg. 38030. The SMART Guide provides that a

jurisdiction may credit a sex offender with a pre-SORNA conviction with the time elapsed from his release (or the time elapsed from sentencing, in case of a nonincarcerative sentence) in determining what, if any, remaining registration time is required. 73 FR 38030, 38036. This jurisdiction then has the authority and ability to credit Respondent with the time elapsed since his sentencing on January 17, 1984 – over twenty-eight years. *Id.* If this Court gives Respondent credit for registering with the time elapsed from his sentencing, then his twenty-five year registration period would have expired on January 17, 2009.

This credit for time should apply even during the time period that Respondent did not register at specific time intervals due to the Missouri State Highway Patrol's direction that he was no longer required to do so. Pursuant to 42 U.S.C.§16913, even during that aforementioned time period, Respondent kept his registration *current* as no changes had occurred in his information. 42 U.S.C.§16913. Also, during that time, the Missouri State Highway Patrol kept Respondent's name on a separate registry list called the "Exempt List," which was still available to the public. The interpretation that a person must maintain consecutive registration throughout the time period is practicably and logically incoherent. Respondent has not been registering for the past twenty-five years consecutively because it has been physically and legally impossible for him to do so. He was specifically ordered not to register by the law enforcement officers of this state after the *Phillips* and *Blunt* decisions. If the approximately three year period Respondent did not register, at the direction of law enforcement, is found to be reason enough to hold that Respondent did not register consecutively for twenty-five years, this Court will then have

created a valid loophole in which to prevent individuals from ever reaching the point of removal. With Respondent for example, at year twenty-four, law enforcement could instruct or otherwise prevent him from registering. Then, after a period of time, inform him that he must register again. Furthermore, the law requiring registration did not exist twenty-five years ago. Unless this Court presumes Respondent to be some sort of legislative psychic, there is no way for him to have complied with this law prior to its drafting and passage.

To look at the law from a logical standpoint, the purpose of the law is to track individuals convicted of sex offenses for certain periods of time after their convictions. This, in theory, helps law enforcement keep track of these individuals to prevent recidivism. When including expiration dates for registration, the logical explanation for this would be that a period of time without another sex offense is sufficient to prove to law enforcement that this particular individual is no longer a threat. To force a person to essentially start over with the registration period in order to register for consecutive years, places improper focus on "consecutive" instead of "years." Respondent has met all of the requirements of the law for removal and is entitled to removal from the sex offender registration list.

III. The Circuit Court Erred in Not Ordering the Removal, Destruction, and Recall of Any Records or References to Respondent Contained in the Sex Offender Registry Maintained by the Appellant or Provided to Any Other Agency or Databank, Including the Disclaimer Regarding "Exempt Offenders" as Listed on the Missouri State Highway Patrol Website Because Said Information was Procured in Violation of the Missouri Constitution and Federal law, and Such Dissemination of That Information is a Violation of Respondent's Rights to Privacy Because Respondent is Not Required to Register as Sex Offender.

In *Doe v. Phillips*, 194 S.W.3d 833, 852 (Mo. Banc 2006), the Missouri Supreme Court stated: "This court rejects the claim that publication of true information about the Does affects a past transaction to their detriment by imposing a new obligation, adding a new duty or attaching a new disability in respect to transactions or considerations already past."

The holding in *Doe v. Phillips* was not limited merely to the removal of the obligation placed on registrants themselves. It extended to the State and its unconstitutional behavior, because of which, it should not be allowed to use the information collected in violation of the constitution. If this were not the case, the holding in *Phillips* would be of little value.

Mere removal of Respondent's name from the sex offender registry will be inadequate to remedy the consequences of Appellant's actions in compelling Respondent to register as a sex offender unless the Court also orders Appellant to recall, remove, and destroy all

records, including electronic data resulting from Respondent's registration as a sexual offender or is in any way reflective that he is a registered sex offender. Similarly, the Opinions of the Missouri Supreme Court in *Jane Doe I et al. v. Thomas Phillips, et al.*, 194 S.W.3d 833 (Mo. Banc 2006) and in *John Doe v. Honorable Matt Blunt, et al.*, 225 S.W.3d 421 (Mo. Banc 2007) will be meaningless and of no practical effect to Respondent if the information and data collected under an erroneous and unconstitutional application of section 589.400 were permitted to remain in the special data banks created under that statute and to thereby remain widely accessible to the public. Thus, Respondent seeks to have his name removed from those records maintained or disseminated under the sexual offender registration laws inasmuch as those records have the unique ability to damage Respondent's reputation as well as his financial and business endeavors since they are routinely and widely published by both public and private entities.[6]

Said registration and information was forwarded to the Missouri State Highway Patrol pursuant to section 589.410, and is available for review by members of the criminal justice system, as well as the public in general, through special data banks pertaining specifically to sexual offenders. Respondent's required registration has damaged and continues to damage his reputation, and subjects him to adverse inferences and consequences in his personal, social, and business relationships and endeavors.

[6] Respondent is not seeking expungement of his arrest and conviction, which will always be on file with the Missouri State Highway Patrol and criminal records registry.

A comparable analogy is the exclusionary rule as it relates to the Fourth Amendment of the U.S. Constitution. The Supreme Court has held that when law enforcement has acted in violation of a person's constitutionally protected rights in gathering evidence, that evidence cannot be used against the person. *See Mapp v. Ohio*, 367 U.S. 643 (1961). Any evidence obtained during or after the illegal search should be suppressed as being derived from an illegal search or seizure under the "fruit of the poisonous tree" doctrine. *Wong Sun v. United States*, 371 U.S. 471, 487-88 (1963). The concept is that law enforcement cannot break the rules and then be rewarded for its unlawful behavior.

Here, law enforcement has acted in violation of Missouri's Constitution Article 1, Section 13 when it forced Respondent to give over personal information about himself, and when it published that information to the world. To permit law enforcement to unlawfully gather information about people, who have been told that they must give over that information or be charged criminally, and then use that information is an end-run around Missouri's Constitution.

An argument to the contrary would call for too strict an interpretation of *Phillips* arguing that it held that publication of true information about sex offenders was not a violation of Article 1, Section 13. *Phillips* held that *publication* alone was not a violation of Article 1, Section 13 as it did not impose a duty on the Does. *Phillips* at 852. That duty rests with law enforcement. Obviously, law enforcement may not publish whatever information it wishes about people, even if that information is true. While it is true that continued publication of that information is not imposing a duty on Respondent, it does cause a substantial detriment to him in that it is subjecting him to public scrutiny and publication

of private information about himself. The whole point of the sex offender registration law is to inform the public of sex offenders. Public awareness is apparently deemed important in these cases because this information is not simply made available to law enforcement, but to anyone who wants the information. The legislature understood the power of public opinion. To subject someone to being a part of this list, whether or not they have an obligation to keep the information up to date, is a collateral consequence of his plea and of the unlawful activity of law enforcement in collecting that information.

In this case, law enforcement should never have had that information in the first place. In *State v. Beine*, section 566.083.1(1), the statute under which Mr. Beine was convicted, was deemed unconstitutional. 162 S.W.3d 483 (Mo. banc 2005). Thus, all of the people convicted under this statute had their convictions overturned and their names removed from the registration list. While their behavior and the facts of what they did had not changed, the Court ruled that the law was unconstitutional and thus punishments and collateral effects of that conviction were likewise without authority. In this case, the Court has held that the law is unconstitutional, thus the effects of that law are without authority.

To agree with any other interpretation of *Phillips* would leave those wronged by the unlawful activity of law enforcement with no remedy and would rob *Phillips* of its full effect. Just as evidence gathered in violation of the Fourth Amendment must be suppressed, information about Appellant gathered in violation of Article 1, Section 13 must be destroyed.

The Supreme Court has held that privacy is a fundamental right. *See Lawrence v. Texas*, 539 U.S. 558 (2003). The information gained about individuals and posted for the public to see—both in Missouri and the world on the internet—is private information. A person's name address, photograph, date of birth, work, school, vehicle description, and information about their offense is published for everyone to see. Because the information was gained in violation of Missouri's constitution and is a violation of Respondent's rights to privacy, the Circuit Court erred in not ordering his sex offender records expunged and destroyed.

CONCLUSION

For the foregoing reasons, this Court should affirm the judgment of the Circuit Court as to its findings that section 589.400 is unconstitutional as applied to Respondent and that a federal court should determine Respondent's registration requirements under SORNA. Further, this Court should overrule the judgment of the Circuit Court as to its refusal to order the destruction of records or references to Respondent contained in the sex offender registry.

Respectfully submitted,

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I hereby certify that on the 10th day of August, 2012, the foregoing brief was filed electronically via Missouri CaseNet and served to:

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I further certify that the foregoing brief complies with the limitations contained in Rule No. 84.06(b) and that this brief contains 5,923 words.

/s/ Matthew A. Radefeld
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